

NOMINATION OF NEIL M. BAROFSKY

HEARING
BEFORE THE
COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED TENTH CONGRESS
SECOND SESSION
ON
NOMINATION OF
NEIL M. BAROFSKY, OF NEW YORK, TO BE SPECIAL INSPECTOR GENERAL,
TROUBLED ASSET RELIEF PROGRAM

NOVEMBER 19, 2008

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NOMINATION OF:
NEIL M. BAROFSKY, OF NEW YORK,
TO BE SPECIAL INSPECTOR GENERAL,
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WEDNESDAY, NOVEMBER 19, 2008

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:10 a.m., in room SD-538, Dirksen Senate Office Building, Senator Christopher J. Dodd (Chairman of the Committee) presiding.

OPENING STATEMENT OF CHAIRMAN CHRISTOPHER J. DODD

Chairman DODD. The Committee will come to order, and I apologize to the witness and to my colleagues and others for being a little delayed this morning in getting going with the hearing. We had a meeting with the Leader, Senator Levin and I did, on the auto issue, and so we got delayed a little bit this morning talking about that. But let me welcome our witness to the Committee and let me make some opening comments. Then I will turn to my friend and colleague from Alabama for any opening comments he may have, and my colleagues as well, and then we will turn to our witness and swear you in and listen to your testimony and raise some issues with you this morning.

Today the Committee will meet in open session to consider the nomination of Neil Barofsky—did I pronounce that correctly?—to be the Special Inspector General for the Troubled Asset Relief Program, or TARP. The current turmoil in the U.S. economy is real and daunting. I think everyone knows that, certainly living it every single day. In enacting the Emergency Economic Stabilization Act and the TARP, the Congress responded with remarkable speed to meet this rising and ever changing challenge.

Under the TARP, the Treasury Secretary has the authority to spend some \$350 billion, an amount that can be increased on relatively short notice to \$700 billion, albeit though a vote by the Congress would be certainly not only allowable under the expedited procedures but would occur, to stabilize the financial system. The Secretary has already committed, as we all know, some \$250 billion to the capital purchase program which provides direct equity injections into banks, another \$40 billion to aid AIG.

Let me add as an editorial note here that one I have deep trouble with and difficulty with, but, nonetheless, it has happened.

The initial request from the administration was a scant three-page bill, as you will recall, granting the Treasury Department unprecedented and unchecked discretion to spend up to \$700 billion in taxpayer dollars to rescue the economy. Congress agreed with the administration on the need to act with urgency; however, in crafting the final legislation, the Congress, and Members of this Committee in particular, worked to add aggressive oversight tools as a check on this broad spending authority—among other things, by the way, that I will not go into this morning, but the oversight tools were very, very important to even people who did not support this ultimately. I think all felt that was an essential ingredient of this proposal if it was going to go forward.

You need only look as far as the eight congressional committees to which the Special IG's office will be issuing reports to notice how seriously Congress takes this responsibility to safeguard taxpayer dollars. To properly discharge its oversight responsibilities, the Special Inspector General must work effectively with a range of offices, including the Office of Financial Stability within the Treasury, the Inspector General for the Treasury, the Congressional Oversight Board, and the Government Accountability Office. Moreover, a significant challenge for the Special IG is to provide meaningful oversight of a program that is continuously evolving to address the changing needs of the financial system and an economy in distress.

As my good friend Bob Corker just pointed out, we have moved away from the TARP largely, although I think there may be some occasions when the TARP would be used, but obviously moving to an equity position rather than acquiring assets is, I think, a welcome change by the way; I feel it is certainly. But, still, I believe the role that the Inspector General can play is still very, very critical overseeing and overlooking all of that as well.

A key part of the role of the Special IG would involve significant management responsibilities. The Special IG has an operating budget of \$50 million. In a relatively short timeframe, the Special IG must hire and oversee a staff, retain a variety of contractors, and begin issuing reports within 120 days. And while Treasury has informed the public of its transactions under the TARP, as required by statute, we are relying on the Office of the Special IG to use the tools it has been given to drill down and certify that these decisions are being made in the best possible interest of taxpayers and consistent with the letter and spirit of the law.

I would note here I think one of the reasons we feel so strongly about this and requiring these reports as rapidly as we are going to seek them is, having been through the experience with the contract issues in Iraq where we only got reports long after the fact, Members on both sides of the aisle were deeply distressed not to know more as these events were unfolding. And so the requirements here will require far more aggressive and expeditious reporting requirements.

In order for this legislation to work properly, the public needs to be reassured that its money is being spent wisely and that that is why the role of the Special Inspector General is crucial to the process. The Special Inspector General's office will be expected to con-

duct oversight and audits of every aspect of this, and with this job comes awesome authority and awesome responsibility.

I would like to take a moment to introduce Neil Barofsky, if I can, of New York who has been nominated—in fact, let me turn to my colleague from New York to do that. I have some comments here, but let me turn to my colleague from New York.

STATEMENT OF SENATOR CHARLES E. SCHUMER

Senator SCHUMER. Well, thank you, Mr. Chairman, and it is my honor to introduce our witness, who is a fellow New Yorker. He is a Yankees fan, although I am told——

Chairman DODD. Immediately in trouble here. Immediately in trouble here.

Senator SCHUMER. Although I am told he is not a Giants fan. He roots, he told me, for the Miami Dolphins. Where is Martinez? He is not here.

Anyway, more importantly, he is extremely well qualified for the post of Special Inspector Attorney General for the TARP program, and we all know his positions will be critical over the coming months and years as we continue to monitor the implementation of such a vast program involving a huge taxpayer investment.

Mr. Barofsky is a former colleague of my chief counsel, Preet Bharara, at the U.S. Attorney's Office. During his 8-year tenure as an Assistant U.S. Attorney in the Southern District of New York, Mr. Barofsky has been involved in a number of cases that related to the current economic crisis. He served as part of a group of attorneys working on mortgage fraud investigations, which is one of the things we have to look at here. He prosecuted the former Refco officers, a big, important company in trading commodities, for their participation in a \$2.4 billion accounting fraud. And last year, he won the Attorney General's John Marshall Award for Outstanding Legal Achievement for Asset Forfeiture. So all of these are very much related to his job as Inspector General, should he be confirmed, and I think as important.

Some may say it takes a great deal of personal courage for Mr. Barofsky to sign up for the job after seeing some of the hearings we have had here. But we already know that he does not have to worry about bravery because Mr. Barofsky demonstrated great bravery when he investigated the Revolutionary Armed Forces of Colombia. That is the narco-terrorist group that controlled more than half the world's annual cocaine production. He successfully indicted 50 of FARC's top leaders. It was at great risk to his own personal safety. If he can take on the FARC, I am sure he can handle a few Wall Street bankers while making sure that taxpayer money is being spent wisely and legally.

So his experience and his academic credentials show him extremely well qualified for the position. I think he is the right guy for the job. I did not know him before he was nominated, but meeting him and reviewing his credentials and history, he is.

I would just like to make a few quick points related to that. First, I think three suggestions.

One, Mr. Barofsky, you should apply some scrutiny to the decisionmaking process that the Department used to develop the term sheet that applies to the Capital Purchase Program. I think in

Treasury's zeal to include the major banks, it made the terms too weak to make the program effective. Without including some lending requirements and strong restrictions on dividends, banks are too tempted to hoard the capital rather than lend it to consumers and businesses that need credit. There are important questions that should be asked about the decisions. Was there any analysis of how the capital would be used by the banks under these terms? Was there any analysis of the likely outcomes of using stronger terms?

Second, I would ask you to look into how banks are spending the money they receive from TARP. While ordinarily the Government has no say in how a private company chooses to operate—and it should not—when taxpayer dollars are being used, it is important we ensure they are used in a way consistent with our goals. The money should not be hoarded or used for outsized compensation packages. Under the IG's authority to oversee the management of the Government investment, it is critical we have a clear understanding of how the money is being spent.

And, finally, the office should examine the process by which Treasury is allowing entities that were not originally eligible to receive TARP funds to now be eligible. The Federal Reserve has received many requests from financial firms to become bank holding companies. In one of today's papers, they said large insurance companies are buying tiny little banks so they can come to the window. I do not want to delay the process of distributing assistance to companies that need it. It is important that we in the markets have a clear understanding of how the program is going to be implemented.

Mr. Chairman, I thank you. I am going to apologize. When we changed the time of this hearing, I am involved in the bankruptcy hearing in Judiciary, but I want to thank you for the opportunity to introduce somebody who I believe will be an outstanding person and fits the needs and bill for this job.

Thank you.

Chairman DODD. Senator, thank you very much, and thank you for that very comprehensive introduction of our witness as well. I appreciate it. In particular, I did not know about the FARC. I would love to talk to you just about that at some point and your work on that.

Let me turn to Senator Shelby, and then I have to take a call outside. But what I would like to do is offer any other Members who would like to make some opening comments briefly, and then we will swear in the witness and hear you. But I will be out for 1 second and then come back.

STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you, Mr. Chairman.

In creating the Troubled Asset Relief Program that we call "TARP," Congress delegated a considerable amount of authority and discretion to the Secretary of the Treasury. With this significant grant of discretion I believe comes the need for oversight and accountability. The Office of the Special Inspector General will conduct that oversight and be the first line of defense in protecting the taxpayer from the type of waste, fraud, and abuse that \$700 billion

is likely to attract. Therefore, I believe it is important that we report this nomination as quickly as possible.

Mr. Barofsky, I appreciate you taking this position. This is a tough job you are going to undertake. A lot of us are very concerned about the lack of accountability here. This bailout was pushed fast. I did not support it, and I am proud that I did not. But there has been no transparency. We do not know who is benefiting from this, where the money is going, and I believe we on this Committee need to know and the American people need to know. Seven hundred billion dollars is a heck of a lot of money, and you are going to be right in the center of it. And the sooner we get you there, I think the better off we will be.

Thank you very much.

Senator Brown.

STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Senator Shelby.

Thank you, Mr. Barofsky, for joining us. I thank Senator Dodd, Chairman Dodd, for bringing this nomination forward. Thank you for your willingness to take on this enormous task. We are counting on you, of course.

There is little precedent in our Nation's history, as we know, for this undertaking. In the space of about a month, the Treasury Department has committed close to \$300 billion, something like \$10 billion every single day of the week. The Federal Reserve, which is not subject to the oversight of this position, has committed a reported \$2 trillion to stabilization efforts, as you know.

Probably the closest thing we have in scale to this effort was the mobilization for World War II when our country went deep into debt to become the arsenal of democracy. The threat then was military, not economic. The Government engaged in massive spending in a short period of time, as we know, to counter a grave danger to our Nation and the world. Even as Hitler threatened the free world, Senator Harry Truman and his Committee found that some of their fellow citizens were all too eager to put their pocketbooks and personal gain ahead of their patriotism.

So while I am hopeful that every single dollar of the \$700 billion will be well spent, I think it is vital we have the vigorous oversight of the actions of the Government and the private sector.

Congress took an enormous leap of faith in providing the authority to the executive branch under EESA. Well, we will know before long whether this leap of faith was justified. Right now that faith is being tested. Three hundred billion dollars has been committed to banks, but it is not clear whether banks are committed to the purposes and the congressional intent of this statute. This money was authorized to address the credit crunch, not fund bank mergers. The housing market, clearly the root cause of our economic crisis, is still being ignored. Despite ample authority in EESA Section 109, the administration refused to invest even a small portion of the rescue funds in the kinds of wholesale loan modification necessary to address the housing crisis.

The auto industry is in dire straits. We had a hearing here yesterday. But it seems it will get no help from this administration. And the transparency and accountability that the administration

committed to provide to Congress and the public have been spotty, at best.

About 4 weeks ago, National City Bank, one of the largest banks in the country, located in Cleveland in my State, was forced by the administration into a fire sale to PNC Bank in Pittsburgh. For more than 160 years, National City has been an important asset to Ohio. By the end of the year, it will likely be an asset of PNC. That sale is being financed by taxpayers, but taxpayers are being stiffed when it comes to getting answers.

Three weeks ago, I asked Treasury to respond to questions about the proposed transaction. I am still waiting, and I believe this Committee is also waiting for answers to questions that arose out of the Committee's hearing on October 23rd. That clearly is unacceptable. I hope our nominee will commit to doing a far better job than the administration has to date.

Thank you.

Senator Bunning is recognized.

STATEMENT OF SENATOR JIM BUNNING

Senator BUNNING. Thank you. I want to thank the Chairman for scheduling this hearing.

One of the Nation's elite prosecutors in the Southern District of New York, Mr. Barofsky must be very familiar with the criminal laws that pertain in this area. The bailout law also allows \$50 million for your office, and so you will have a very ample amount of resources. But I have serious concerns with your nomination.

The nominee may be a dedicated public servant. He appears to be a skilled prosecutor and a man of integrity. But I wonder why taxpayers should have to pay \$50 million to a watchdog who will have nothing to watch. How will the IG perform his statutory role when the Secretary has rewritten the law already less than 2 months after it was enacted?

As you know, Mr. Chairman, I opposed the plan to bail out grown-up investors who bought these high-risk mortgages, and I am glad the Secretary has abandoned it. One hundred and fifty economists from all over the world expressed concern about the plan's fairness, its ambiguities, and its long-term effect. They urged Congress to go slow and to hold hearings. We never held them. These events later proved the Paulson plan did not save us from a worsening financial situation, but it is expected to contribute to a deficit of over \$1 trillion next year.

The bill authorized the Treasury Secretary to purchase troubled assets, and it created this Special IG position to oversee the purchase and management of these assets. The IG was supposed to assure that the process was fair and free of conflict of interest.

Last week, however, the Secretary informed the press that he has no plans—and I emphasize no plans—to purchase troubled assets. He has already used \$290 billion to provide capital to banks and to AIG. In other words, he used the money to buy new bank equity, not mortgage-backed securities and other existing financial instruments held by the banks—money Congress appropriated for one purpose, the purpose he described, and used it for something else.

If the Treasury is going to rewrite the law as it goes along, we might as well go home.

In his testimony earlier this week, Mr. Barofsky did not question Secretary Paulson's unlikely interpretation of the bailout law. Now, that is the money that is spent. If he does not question it, he will have little to do but watch the preferred stock positions mature. The real purchasing of so-called toxic waste debt is taking place within Fannie Mae and Freddie Mac, hidden from the public view and outside of your jurisdiction. Why should taxpayers have to pay \$50 million for your office as well?

Ultimately, I believe Mr. Barofsky, with his impressive legal skills, can serve the public far better in the Southern District of New York where he can continue to prosecute mortgage fraud.

Thank you again, Mr. Chairman, for holding this hearing. I look forward to Mr. Barofsky's testimony.

Chairman DODD. Thank you very much, Senator.

I lost track here. Sherrod, who is—Senator Tester, have you had—oh, Senator Reed. Excuse me. Then Senator Tester.

STATEMENT OF SENATOR JACK REED

Senator REED. Thank you, Mr. Chairman, and welcome, Mr. Barofsky. Thank you for your willingness to serve in what I think will be a very important, critical position.

There are many areas that are evolving under this program. Three, in particular, I think have to be highlighted.

First, under the authority of the TARP program, the Treasury can participate in the equity of companies with preferred stock and with warrants. It is essential that they set appropriate values in these instruments so that the taxpayers will maximize their return in the future, and that is an area I would hope that you and your colleagues would look at very closely to make sure that the system is in place and the pricing is in place to ensure that taxpayers do get the value of their investment in these institutions.

Second, Senator Brown mentioned it, and I think it is very important: mortgage modifications. The fundamental assumption economically that every American I think has made in the last 20 years is home value do not go down. And when those value fall, as they are, then the economic calculation of not just Wall Street but of Main Street is absolutely distorted. We are seeing that now. We have to do more on modifications. The authority is there. I know you do not have a policy position, but you should exert every bit of your authority and persuasive ability, I think, to help get the administration moving forward on loan modifications.

And then there is a judgment that the Treasury has to make about which institutions it will invest in. That has to be done, I think, impartially based upon the viability of the institutions, and I think that is something, too, that your office has to be conscious of.

And with any Inspector General, most of the real issues emerge when you get on the job. We do not anticipate them, but sitting there watching carefully and objectively about the operation of this program, issues will come to mind. You have to make very careful judgments about prioritizing these and moving very aggressively to

ensure this program is effectively and fairly administered by the Treasury Department and other agencies.

So I think you have a critical job, and I wish you well. Thank you.

Chairman DODD. Thank you very much, Senator.

Senator Corker.

STATEMENT OF SENATOR BOB CORKER

Senator CORKER. Thank you, Mr. Chairman, and I will be very brief.

I agree, I think you have a very important job, and it looks like to me your credentials are impeccable. It looks like you are a tough character, and I think that is needed in overseeing a program like this.

On the other hand, I do think some of the comments Senator Bunning made regarding the fact that we are not pursuing these toxic assets right now does change things a little bit. We have no idea how the second tranche will be spent, if it is spent, and it is possible that some of that does go for those types of assets. From the comments that have been made, I think we would have been far better off buying senior preferred shares in this initial outgo. And I think it is a far more prudent route for us to take. But I hope that during your testimony—and I have got to step out, but certainly will be watching from other rooms. I hope you will address the questions of cost. I do think that maybe because of the way things are evolving, it might not be necessary to do some of the staffing that might otherwise have occurred, because we are not doing those toxic assets.

But, welcome; you seem incredibly prepared for this, and I think we all look forward to working with you.

Chairman DODD. Thank you, Senator.

Senator Tester.

STATEMENT OF SENATOR JON TESTER

Senator TESTER. Thank you, Chairman Dodd, and as always, thank you and Ranking Member Shelby for holding this hearing. I want to thank Mr. Barofsky for being here.

As has been said in earlier opening statements, you are, I think, incredibly qualified for the position. It is a position that is an interesting one because it is not your ordinary type of situation with the oversight you are going to be applying on \$700 billion.

I am going to save most of my time for the questions at the end, but I will just tell you this: I think that as you are confirmed and you go through with this program's Inspector General on the \$700 billion rescue package that was put out, I think what is going to be critically important is communication and timely communication so that we can get a handle on what is going on. I think what we have heard here already today is the fact that the program has changed in the last 6 weeks, and we had really no say—at least I can speak for myself; I had no say in how this program was changed. And I have got a feeling it is Senate-wide.

And so the question is that, you know, how are you going to handle that if it changes again. How would you deal with those kind

of situations? And do you think they are proper? But we will hold most of those for the questions.

I just want to thank you for being here, and I want to thank you for putting up somebody with such an impressive resume for, number one, public scrutiny and then public service. So thank you very much.

Chairman DODD. Bob Menendez.

STATEMENT OF SENATOR ROBERT MENENDEZ

Senator MENENDEZ. Thank you, Mr. Chairman.

Very briefly, with almost \$300 billion of the rescue plan already spent, we cannot afford to wait any longer for a strong and effective Inspector General to monitor the process and ensure taxpayers are protected. And I want to join the chorus of voices, Mr. Barofsky, who want to thank you for your willingness to serve. I want to commend you on the work you have been doing on combating mortgage fraud, which is something that I care about very much. And, if confirmed, you face a daunting challenge that even the Treasury Department's present Inspector General simply called, "It is a mess." And he said that as someone who has been trying to work to oversee the bailout program until your position is finally filled. I do not think he said anyone understands right now how we are going to do proper oversight of this thing, and that, of course, makes me concerned. So I am looking forward to hearing what your testimony is going to be as to what you think the proper oversight is.

I look forward in the question period to asking you your understanding of congressional intent, as we put it out there, as well as your authorities and the scope of those authorities, because your understanding of that and how you use it is going to be critical to the successful implementation of your job and your mission.

Thank you, Mr. Chairman.

Chairman DODD. Thank you. Thank you very much, Senator.

Mr. Barofsky, welcome to the Committee. I am going to ask you to rise, if you would, and raise your right hand while I administer the oath to you. Do you swear or affirm that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BAROFSKY. I do.

Chairman DODD. Do you agree to appear and testify before any duly constituted Committee of the U.S. Senate?

Mr. BAROFSKY. I do.

Chairman DODD. I thank you for that, and I appreciate your willingness to take on this responsibility. I want to echo the comments of my colleagues. This is a tough area we are all involved in here, as you have heard from Senator Bunning and my other colleagues. We admire people who are willing to come and take these jobs on, so let me begin by expressing my gratitude to you for doing so.

And with that, let us hear any opening comments or statements you may have, and we will take your full statement, obviously, and any supporting documents and so forth that you think might be helpful. But with that, the floor is yours, and then we will engage in a little question-and-answer period.

Let me just say to my colleagues as well, my intent here is to move this as rapidly as we can. I will be in contact, obviously, with the Leader's office and the Minority Leader's office, the Republican Leader's office, to find out how quickly we can move this along. Very clearly, we want to have you on the job as fast as we can. I think all of us agree on that point.

So we are happy to receive your testimony.

**STATEMENT OF NEIL M. BAROFSKY, OF NEW YORK,
TO BE SPECIAL INSPECTOR GENERAL, TROUBLED ASSET
RELIEF PROGRAM**

Mr. BAROFSKY. Thank you. Chairman Dodd, Senator Shelby, Members of the Committee, I am honored to appear before you as the President's nominee to be Special Inspector General, the Troubled Asset Relief Program. I am grateful to this Committee for taking the time to consider my nomination, and it is indeed humbling to be considered for such an important, vital position at this moment in our Nation's history. If confirmed, I look forward to working closely with the Members of this Committee and your respective staffs, as well as the other committees that will be overseeing the program and carrying out my responsibilities as Special Inspector General.

If I may, I will take a moment to share with you my professional background and why I think it prepares and qualifies me for this position.

The past 8 years I have served as an Assistant United States Attorney in the Southern District of New York. My experience as an AUSA has reaffirmed to me the importance and rewards of public service, and if confirmed, I look forward to the opportunity to provide greater service to this country at a most serious time.

This past summer, our United States Attorney, Michael Garcia, asked me to supervise a newly created Mortgage Fraud Group that responds to the havoc that mortgage fraud has created in our district to homeowners and to lenders. Drawing on an amazingly talented group of prosecutors of different levels of experience and expertise in areas such as Securities Fraud, Organized Crime, Major Bank Fraud, Asset Forfeiture and Civil Fraud, we have attacked at the root those who have contributed significantly to the current housing and financial crisis through the wholesale fraud of homeowners, lenders, and investors. We have focused on crimes committed by those who have tricked lenders into making loans that were never intended to be repaid, those who have engaged in predatory lending practices by tricking homeowners into applying for mortgages that they can never afford, and the criminals who have engaged in schemes where they literally steal the homes out from under citizens who found themselves in default on mortgages.

I have also supervised our office's joint investigation into the vast credit default swaps market with the office of the New York State Attorney General. I believe that my experience as the head of the Mortgage Fraud Group and my role in both supervising and participating in these investigations has given me a vital education in understanding some of the root causes of the current financial crisis, as well as the securities and derivative instruments whose decline in value has been such an important part of it.

It has also given me the tools to identify the markers of fraud throughout the financial industry, the necessary expertise in investigating such frauds, and, of course, the experience of establishing a plan of attack on those committing these frauds.

While an AUSA, I was also one of the lead prosecutors in the investigation and prosecution of those criminally responsible for the \$2.4 billion fraud committed at Refco, Inc., the commodities giant that collapsed in October of 2005, just months after the company went public. This investigation and trial has given me the experience to understand and detect complex billion-dollar frauds and an understanding of the financial audits and where they can fail.

Over the last few weeks, as many Americans, I have been closely following the current financial crisis and the Government's response and, in particular, the creation and execution of the TARP. If confirmed, I look forward to contributing to the oversight that Congress has established to protect the taxpayers' \$750 billion investment and fulfilling the duties of the Special Inspector General as outlined in the relevant governing statute.

My goal as Special Inspector General of the TARP would be to make sure that its rules and regulations are followed and to prevent waste, fraud, and abuse. We will need to establish an efficient and effective audit program, and, of course, we will need to establish an investigative arm. And I can assure this Committee that we will tirelessly investigate and refer for prosecution any individual or entity that tries to criminally profit from this program.

I intend to work very closely with each of you, your colleagues on the other committees, your staffs, GAO, and all others who are charged with overseeing this historic program. I am accountable to you, the Congress, and the American people. I fully intend accordingly to keep you fully informed and promptly apprised of all significant findings and concerns that come across my desk, if confirmed.

Mr. Chairman, Senator Shelby, Members of the Committee, I want to thank you for this opportunity to appear before you, and I look forward to answering any questions that you may have.

Chairman DODD. Well, thank you very much. I should have noted, by the way, I do not know if you brought any family with you down here today. Is there anyone in the audience that you wanted to recognize?

Mr. BAROFSKY. Not today, Mr. Chairman.

Chairman DODD. Very well. Let me begin and just ask you sort of some basic fundamental questions. I am just curious as to how it was you were offered this position and why you chose to accept it.

Mr. BAROFSKY. Mr. Chairman, I guess about a month ago, our U.S. Attorney, Michael Garcia, called me into his office, gave me a copy of the statute, gave me a copy of specifically the Special Inspector General section of that statute, explained to me what it was, and asked me if I would be interested in the job. Frankly, although I was aware of the bailout program, I was not aware of that position until that time. And I went home, I talked to my wife, and we discussed whether or not I wanted to be put forward to apply for such a position.

The next day I told him yes, and then the process was that the White House scheduled an interview with me, and I spoke with individuals in the White House and at Treasury and then was told that they would recommend me to the President for nomination for this position.

Chairman DODD. And tell me your thought process on why to accept it. As you heard, there is a lot of controversy around all of this, and the TARP has changed dramatically, even in just the last few days. So tell me your thought process and why you decided to do this. And, by the way, I commend you as well for what you have been doing on the mortgage fraud area. I cannot thank you enough. It angers all of us to see what has happened to innocent people out there as a result of predators taking advantage of people, so we commend you for that effort.

Mr. BAROFSKY. Well, thank you, and because of my work, it was a difficult decision. I love my current job. I think I have one of the greatest jobs a lawyer can have in this country in serving the American people the way I do.

But when asked, when Michael Garcia asked me and pointed out to me that I spent the last 8 years serving this country and serving the taxpayers, and this responsibility and this job is a level of service that is even greater than the one I have had, and it is very, very difficult, I think, for a patriotic American who has benefited so much from the opportunity of the last 8 years and the training I received, and to be offered the opportunity to take that training and that experience and to serve the people and to protect \$700 billion, it is a staggering and humbling sum. After I discussed it with my wife, there really was no way that I could say no.

Chairman DODD. Let me ask you sort of two questions related. One, as you have looked over the statute and you have looked over the issue so far, what are your priorities, number one? And, second, the statute requires the Secretary of the Treasury to public conflicts-of-interest standards, which he has done. As Special IG, would you pay particular attention to the observance and appropriate conflict standards and, if appropriate, make recommendations to the Secretary on improvements of such standards? This is a matter of great interest to people. We are talking about a community that goes back and forth and who is going to be handling these assets? To the extent they are involved in that part of the program, are there people who are directly conflicted, would be because of their present positions or positions they have been in? And it is a matter of some concern. If this was going to pass the smell test, what we are doing, and the credibility of the American public, they have got to be satisfied that they are not people enriching themselves at the expense of the American taxpayer.

And so I do not mean to preempt your answer by asking you what you think the highest priority is and then obviously focusing on the conflicts-of-interest section, but I think that is an important section. But I want to hear from you what you think the priorities ought to be as Inspector General.

Mr. BAROFSKY. I think conflict of interest is obviously of critical importance to the job of Special Inspector General. There are many areas within this program for conflicts of interest, starting at the very top with Treasury officials, based on former employment or fu-

ture employment, going down—and I think it is very, very sensitive. It is with the contractors, the asset managers who have not yet been selected, the already existing contractors. There must be very strong and stringent conflict-of-interest provisions.

I understand that there have been mitigation plans that have been submitted by the existing contractors. I have not seen those. Obviously, as future contractors are selected, they, too, will be submitting mitigation plans. And, of course, with conflict of interest, the devil is in the details. And assessing the strength of those plans, making sure that they are strong enough to, one, avoid any conflict of interest and, two, as you said, Mr. Chairman, making sure that we can give some assurance to the American people that those conflicts of interest are being monitored very closely. And I think it will be a top priority, if I am confirmed, to make sure that there is strong and vigorous enforcement of the conflict-of-interest provisions and to make sure that those provisions are sufficient.

Chairman DODD. I thank you for that.

Let me turn to Senator Shelby.

Senator SHELBY. Thank you, Mr. Chairman.

Mr. Barofsky, you will be required, as I understand, by statute not later than 60 days after your confirmation to submit to the Congress, to this Committee, a report of all the TARP activities. This report will likely be Congress' primary source of objective information in evaluating the progress of TARP.

Do you believe, sir, that you will have the resources necessary to complete this report in 60 days?

Mr. BAROFSKY. Senator Shelby, I intend, if confirmed, to submit a report within 60 days.

Senator SHELBY. I hope you do because we have no information on who is getting what or how the money is being spent, who is benefiting from it, and so forth. It is a big mystery to all of us, and it should not be.

One of your primary duties as the Inspector General would be to report to Congress the Treasury Secretary's explanation for the necessity of purchase for each asset required. I am getting into the little details here. Thus far, I believe the Treasury Secretary has not clearly articulated to Congress his decisionmaking under the TARP activities.

Given the lack of debate during the passage of TARP, I am concerned that the Treasury's decisions continue to be made in an ad hoc manner with little direction and spending a lot of money.

Could you explain to the Committee the process that you envision as the Inspector General for your reporting of the Treasury Secretary's decisions to Congress?

Mr. BAROFSKY. Obviously, this would be an area of great importance. As you noted, Senator, it is part of the statutory requirements of the Special Inspector General to report back on the reasons for each purchase of assets, and I would certainly intend to vigorously pursue and fulfill that obligation by sitting down with the relevant staff and getting the full and complete answer to your question. And I will work with Treasury, with the Secretary, and with your Committee and your staff to make sure that we bring the answers to those questions in our reporters.

Senator SHELBY. One of your other functions, I think a very important function to be an Inspector General, will be to evaluate the impact of the program activities on the marketplace. And while it is vital to know who is receiving the funds under the program, I believe it is even more important to know what the recipients are doing with the funds and the details of where this money is going.

Do you plan to detail this to the Committee and the Congress?

Mr. BAROFSKY. Senator, there are obviously certain requirements under the statute and under the contracts of how this money is spent. There are other areas that are not addressed in the contracts and in the statute. I would intend to work, again, closely with this Committee and your staffs and would work hard to do the best that I can to bring that information that this Committee requests, that other committees request, and to report on it.

Senator SHELBY. Do you believe the American people need to know, should know where this money is going, who is benefiting from it, how it is being spent, all through this, since ultimately it is their money?

Mr. BAROFSKY. And, Senator, it is an absolute requirement, I think, under the statute for the Special Inspector General to report where this money is going.

Senator SHELBY. Thank you, Mr. Chairman.

Chairman DODD. Thank you very much.

I will turn to Senator Tester.

Senator TESTER. Thank you, Mr. Chairman, and thank you once again for being here.

Do you feel it is within the scope of the IG to ensure that the Treasury Secretary makes investments from the TARP funds that are true to the mission and goal of the program?

Mr. BAROFSKY. Senator, I think it is absolutely clear from the statute that there are certain considerations that must be made by the Secretary and by Treasury in administering the TARP. And I think it is an appropriate role for the Special Inspector General to ensure that the statute is being followed and that there is consideration given to the purposes that are set forth in that statute.

Senator TESTER. So let's take into consideration an area that I have serious reservations about, and that is executive compensation decisions as they relate to AIG and something that Senator Brown brought up as far as bank consolidations being funded by TARP. Those were not—in fact, some of those were specifically addressed as far as congressional intent, the executive compensation, and we have kind of rolled into a new area with banks being given money and allowing banks to take that money and buy up other banks.

How would you respond to those concerns?

Mr. BAROFSKY. I think each concern obviously has to be addressed separately. I think executive compensation is obviously of vital importance. It is of vital importance because it is in the statute. It is part of the regulations. It is part of the agreements. And it is something that, again, as I have been following what is going on from an outsider's perspective, one of the most important things is the optics of the entire TARP. And if confirmed as Special Inspector General, I would work tirelessly not only with my office but with the other offices of oversight to make sure that the regula-

tions, the contractual terms, are being honored by those who are receiving Treasury funds and auditing and, if necessary, investigating if the audits show that those funds are being misused and inconsistent with the way that that money is supposed to be spent.

Senator TESTER. What about the monies given to banks and it is being used for bank consolidation?

Mr. BAROFSKY. Senator, I would have to look more deeply into that issue. I am not entirely familiar. You mentioned that as part of the legislative intent. I am not familiar with the details of that. But with any concern of this Committee or another committee of the Senate or Congress, we are going to take a good, hard look and analysis at any issue that is raised.

Senator TESTER. OK. You are coming into this, and it is through no fault of your own, at a point at which \$300 billion, approximately, has already been spent. Ranking Member Shelby talked about there is a report-back period of 60 days and 120 days.

If you find something that you have serious reservations with, are you limited by those dates, or can you go directly to Chairman Dodd or Chairman Baucus and talk about your concerns immediately?

Mr. BAROFSKY. I am a newcomer to the job, so I would have to consult with counsel. But my instinctive reaction—and I probably should not go with my instinctive reaction—would be that I would not wait at all. If there is a serious concern that is impacting the American people and the spending of their money, absolutely we would have to bring sunshine to that.

Senator TESTER. OK. The legislation as it was originally written lists a series of duties for you, the Inspector General, and most of those deal with the troubled assets that were supposed to be purchased or procured by the Secretary of the Treasury. Do you feel that we need to rewrite the law now? Because he has already said that he is not going to do that anymore.

Mr. BAROFSKY. I believe that the jurisdiction and authority that is set forth in the statute for the Special Inspector General absolutely applies to the Capital Purchase Program. I believe that under the statutory definition of “troubled assets,” it includes the equity position, the preferred shares, the warrants that are being acquired by the Treasury. That is my first reading. I have not done a full statutory analysis.

It is my understanding that Treasury views it that way as well. So I do believe that to the extent the Capital Purchase Program—I also believe, similarly, the investment in AIG also qualifies as a troubled asset purchase and would be fully within the jurisdiction of the Special Inspector General.

Senator TESTER. All right. Good. What do you—well, let us start out this way: Do you intend to look at all monies that have been appropriated from this \$700 billion? And what I am getting specifically at is the \$300 billion that has already been appropriated and spent. Do you intend to look into those dollars to see if they were spent appropriately?

Mr. BAROFSKY. Yes, Senator. I mean, it is—of course, one does not know what is going to happen with the other \$350 billion at this time, but the role of the Special Inspector General is to provide oversight for the spending of that money.

Senator TESTER. So even if the money has already been spent, you intend to go back and look and——

Mr. BAROFSKY. I am sorry, sir. I did not understand your previous question. Absolutely. I think that it is—a vital part of the role of the Special Inspector General is to look back as well as to look forward, particularly with the processes that have already occurred. And Senator Schumer in his comments talked about some of the looking back on decisions that have already been made. The only way to assure that everything goes appropriately in the future is to look back on how the decisions were previously made.

Senator TESTER. All right. Thank you very much. Thanks for your honesty. I appreciate you once again putting yourself into this position. I think you are doing a great job.

One more question. Just 50 million bucks, how many people are you going to hire?

Mr. BAROFSKY. I do not know, Senator. I think one of the first things that I would do is meet with Inspector General Thorson, who estimated recently, I noticed in the press, that there would be a need for as many as 100 people on staff. But as I sit here, until I build—my first step would be to talk to him and figure out where he got those numbers. Then I would start building my own core management staff and then build out from there. But it is difficult for me at this time to estimate the exact number of individuals.

I will tell you, though, that \$50 million is a large number. It does not mean that we are going to spend \$50 million.

Senator TESTER. And I appreciate that, too. How long do you think it is going to take for you to get your staff up fully functioning?

Mr. BAROFSKY. Again, it is very difficult for me to say that now because, among other things, it is an evolving process. And one of the things I read in the paper is that Senator Paulson is going to—I am sorry.

Senator TESTER. Secretary Paulson.

Mr. BAROFSKY. Secretary Paulson is not planning on immediately spending the other half, and that he is going to defer that to the next administration. And, obviously, how that money is spent will impact how we build our office, if I am confirmed.

Senator TESTER. Yes. What I would also encourage, as in the previous question that I asked, is, you know, \$300 billion has already been spent, so whether they spend the next tranche immediately or not is, I think, irrelevant at this point in time as far as your position is concerned.

Mr. BAROFSKY. And I just want to stress that on day one, if I am confirmed, I am not going to wait until my staff is completely built up and in place before oversight begins. It begins on day one.

Senator TESTER. Thank you.

Thank you, Mr. Chairman.

Chairman DODD. Thank you very much.

Senator Bunning.

Senator BUNNING. Thank you, Mr. Chairman.

Mr. Barofsky, from your present statements, you are totally familiar with the Capital Purchase Program?

Mr. BAROFSKY. I would not say that I am totally familiar with it. I have reviewed the publicly available information on the website.

Senator BUNNING. OK. According to the minutes, of which I have a copy, of October 7th, which was 3 days—or actually 4 days after the law was passed, the Oversight Board created by the law debated whether the bailout bill gave the Secretary the authority to provide capital to banks through this program. And there was as pretty thorough discussion about it, and there was enough counsel people there—by that, I mean there was counsel to the Assistant Secretary of the Treasury, the counsel for the Secretary, Department of the Treasury, senior counsel to the Department of the Treasury, and on down the line, along with Mr. Bernanke, Mr. Paulson, Mr. Cox, Mr. Preston, and Mr. Lockhart were the principals of this meeting. And they read the law as though they had the right to go in and purchase assets from banks or create new assets and purchase them. They were not sure that the law gave them that authority. So they had to get someone to say, OK, you can do it. So they got this piece of paper, and in the minutes of the Financial Stabilization Oversight Board meeting, they made the determination that they could do that.

What is your understanding of the statute and its purpose? Is the intent relative, or is the Secretary free to use the \$700 billion as he sees fit?

Mr. BAROFSKY. It is my opinion that the Secretary is not entitled to use the \$700 billion as he sees fit without having authorization within the statute. I think that—

Senator BUNNING. Well, that is what my question is to you.

Mr. BAROFSKY. And my answer is it has to be within statute, or he would not have authority to do so.

Senator BUNNING. And who is going to make that determination? You as the IG?

Mr. BAROFSKY. If a plan or proposal is put up and it is outside the scope of the statute, we would certainly let the Secretary know and we would let this Committee know.

Senator BUNNING. Let me read the statute to you, then, because I am not—as my Ranking Member says, I am not blessed with being a legal eagle, a lawyer. I have got enough of them in my family.

Mr. BAROFSKY. Senator, may I ask what section here?

Senator BUNNING. Yes, it is Section 9, Troubled Assets. The term “troubled assets” means, “(A) residential or commercial mortgages and any securities, obligations, or other instruments that are based on or related to such mortgages, that in each case was originated or issued on or before March 14, 2008, the purchase of which the Secretary determines promotes financial market stability; and (B) any other financial instrument that the Secretary, after consultation with the Chairman of the [Board of Governors] of the Federal Reserve System, determines the purchase of which is necessary to promote financial market stability, but only upon transmittal of such determination, in writing, to the appropriate committees of Congress.”

We do not have that. We have not got any of that. This Committee has never received any of that. So how in the world could

the Secretary of the Treasury go out and create new securities and use that money to purchase them?

Mr. BAROFSKY. Senator Bunning, obviously, as an outsider, I am not aware of what internal reports may have been made by Treasury—

Senator BUNNING. Well, we are telling you. You are here as a witness. We are telling you this Committee has not received one piece of paper documenting any of these things.

Mr. BAROFSKY. I think it is very clear from the portion of the statute that you just read that that is a requirement under the statute.

Senator BUNNING. Thank you. With all due respect, your office is a perfect example of why the Government should not be managing private sector financial institutions or other private sector businesses. As you know, Secretary Paulson made it clear last week and yesterday to our caucus that he has no plans to use TARP money to purchase troubled assets, as Congress intended by the statute I just read to you. Instead, he has used nearly all of the funds available to him, a total of \$290 billion so far, to provide capital to financial institutions, some of which are not troubled—some of which are not troubled and said, “We do not want the money.” But he said, “You have got to take it because that gives confidence to the others that need it.” I can get you chapter and verse on that if you would like, some of which he said—he has, in fact, put pressure on some banks to accept Government capital when they had access to other capital and did not want a Government investment.

Your office was created to oversee the management of troubled assets, which Congress understood to mean mortgage-backed securities. Do you have any authority to oversee the management of troubled assets purchased by Fannie Mae or Freddie Mac under this current statute?

Mr. BAROFSKY. My reading of the current statute is that the responsibility of the Special Inspector General would be on assets that are purchased under the Troubled Asset Relief Program.

Senator BUNNING. Not under the passed act that we put \$300 billion into FHA and gave an unlimited amount of money to Fannie and Freddie, to the Treasury to purchase their troubled assets. You would not be involved in that.

Mr. BAROFSKY. I would have to do a much more detailed statutory analysis, but my initial impression is that you are correct. I think that as Special Inspector General, I think we would be working with other agencies involved in relief efforts to the extent that they intersect and are interrelated, and with the Inspector Generals of those relevant entities.

Senator BUNNING. Thank you very much. My time has expired.

Chairman DODD. Let me just say to my colleague as well here, I was going to ask staff—because it is a good question you have raised—as to whether or not we have received any documentation. And, granted, we have a lot more to get, I would say to my friend from Kentucky. But the Treasury Department did transmit letters to us notifying us that, in consultation with the Chairman of the Federal Reserve, equity injections in banks was necessary. So we have received at least some documentation.

Senator BUNNING. From this special——

Chairman DODD. Yes. But the point my colleague is making is certainly -I do not want to suggest to you that that is adequate, and that is the reason we need to get these offices up and running so we can have actually an office that is responsible for doing exactly what the Senator is talking about, getting us that material. So I appreciate the question because it is an important one, but just for the purposes of clarity, there has been some communications already, which we are happy to share with my colleagues, by the way.

Senator BUNNING. But not to the Members, just to the Chairman and Ranking Member?

Chairman DODD. Well, it is to the Members as well. At any point we should see that you are getting whatever—this does not come to me alone. Every Member of this Committee has a right to see these letters and documentation, so we will make sure——

Senator BUNNING. But they were not sent.

Chairman DODD. They were not sent to?

Senator BUNNING. To Members.

Chairman DODD. Well, I do not know. Were they?

We will make sure they are available. We thought maybe they were sent to all Members, anyway. We will make sure that happens.

Senator BUNNING. Thank you.

Chairman DODD. Senator Reed.

Senator REED. Well, thank you, Mr. Chairman. As has been noted, the nature of the program has changed since the initial outline discussed by Secretary Paulson. In that sense, do you think it is incumbent initially to review the initial contracts that were drafted with the notion of an asset acquisition program to ensure that those contracts still are returning value to the Treasury?

Mr. BAROFSKY. Yes.

Senator REED. And that is going to be one of your major initiatives initially?

Mr. BAROFSKY. We are going to be reviewing—if I am confirmed, I believe it is important for the Special Inspector General to review all the existing contracts and to evaluate what the decisionmaking process was to make sure that it was done appropriately, absolutely.

Senator REED. And this goes to the organization of your office. I would presume that you will be retaining accountants and people skilled in financial transactions, not just attorneys or legal experts.

Mr. BAROFSKY. Yes, Senator. In building my staff, if I am confirmed, I would seek to complement my skills and my background, which is legal and investigative, with those with accounting expertise, and in particular audit expertise. I think that will be vital to building an Office of the Special Inspector General.

Senator REED. You know, one of the realities of our present dilemma is that these products that are at the heart of this crisis are so complicated that even the most expert people sometimes look at them and say, "I do not know what is going on." I just get a sense that you are going to have to make a judgment about how specialized and how detailed your staff will be, and just if you want to

comment on that point about anticipating the complexity you might face or the special resources you might need.

Mr. BAROFSKY. Well, Senator, obviously the statute gives us a great deal of latitude in addressing those concerns, and through my previous experience, I have had experience in investigating some of the most complex of these instruments. And they are complex, and even within the industry they are very complex, and understanding can be limited.

But ultimately I am extremely confident that, if appointed—I am sorry, if confirmed, we would take whatever steps are necessary to make sure that we understand the instruments before we try to audit and investigate them. Otherwise, it would be a waste of resources.

Senator REED. And this goes to the question that has also been raised, I think particularly by Senator Bunning, about the total resources available is \$50 million. Do you anticipate now that you will use that? Or how fast will you use it, I guess is the question? Do you have any idea of that?

Mr. BAROFSKY. It is very difficult for me to give an answer to that question at this time as to what the timeframe is. It is a lot of money. You know, I believe it probably exceeds, although I do not know the details, the annual budget of my current U.S. Attorney's Office, which is a large office.

It is not all going to be spent right away, and I think it is very important that philosophically, as the role of the Special Inspector General whose job and mandate is to promote efficiency and avoid waste, we have to be very, very vigilant in how we spend the money, because nothing would be more ironic and just wrong, frankly, if we are not efficient in the way we spend the money.

So I intend, if confirmed, to be not only a watchdog for the \$700 billion, but included in that, of course, is the \$50 million that would go to this office. I can assure this Committee that, if confirmed, I would be extremely vigilant.

Senator REED. Let me ask a final question. In your mind, are there established channels of communication if you find wrongdoing? And could you kind of describe your concept today of how you would report a discovery of significant wrongdoing or significant deviation from policy that required correction?

Mr. BAROFSKY. Well, certainly I think it is very clear, if there is criminal conduct, the Special Inspector General's office would investigate that, and if we found criminal conduct, we would refer it to the Attorney General. I think that is very clear from the statute.

Senator REED. What about just the kind of irregularities that are not criminal but that go to the efficiency and the appropriateness of the program? Are you clear who would you would report to? And are they clear that they are supposed to act?

Mr. BAROFSKY. Well, I am only the nominee at this point, so I have not had any detailed conversations with those in Treasury how the system would work. But, obviously, if we found something that raised a concern, we would immediately go to the Secretary or whoever is directing the TARP activities.

Senator REED. I think there is another aspect to this, and this is appropriately communicating to this Committee and to the pub-

lic at large, because that has to be a key element of the IG. I hope you agree with that.

Mr. BAROFSKY. Senator, as I said in my opening comments, I think that the way the statute is drafted makes that very, very clear. This is an Inspector General that reports to the Congress and to the American people to the eight oversight committees, the eight Senate congressional committees that are providing oversight, and, obviously, to this one, which has primary jurisdiction. So, absolutely, we will take—if I am confirmed, our reporting requirements we will take very seriously, and this Committee will know if we are having problems or issues.

Senator REED. Well, let me finally, finally open up just another category; that is, I have found in my experience in other institutions and the military that the IG functions best when there is a sense that people within the organization who might be aware of issues that are rising feel that they can come and that they will not be punished or in any way ostracized, or whatever, by their—is that going to be your policy, too? And will you do that in a formal way?

Mr. BAROFSKY. I have given some thought to this issue, and one of the things I would do, if confirmed, is to go and look at other examples as to how write the procedures and policies, but a vigorous whistleblower strategy complete with a hotline, I think we are going to establish, or I would establish it on the website to provide for those types of referrals. And then I would work and take a look how other organizations have dealt with that to help design the right protection for potential whistleblowers. But that is a vital, vital concern, and it is one I have given a lot of thought to.

Senator REED. Thank you very much.

Chairman DODD. Thank you, Senator, very much.

Senator Brown.

Senator BROWN. Well, thank you, Mr. Chairman. Just a couple of questions.

On September 30th, the Treasury Department announced that banks could begin to recognize the losses of banks they purchased, a change that may cost taxpayers as much as \$140 billion. How does the same Legal Department rewrite the Tax Code 1 week, but then argue a few weeks later that it is prevented from helping homeowners or the auto industry?

Mr. BAROFSKY. Senator, your question addresses sort of the internal deliberations of, I guess, the Legal Department at Treasury. As an outsider who has just been nominated, I have not had any conversations with them on how they have come to those policies. So I really cannot tell you what went on in that deliberative process.

Senator BROWN. Do you remember your reaction when you saw that when one bank can buy another, it can take its liabilities and save billions of dollars in taxes? Do you remember your reaction when you saw that, if there was precedent, if it surprised you, if it was something that you had never seen before?

Mr. BAROFSKY. Senator, one of the things I have learned as a prosecutor is that sometimes anybody's initial reaction needs to be tested with research, statutory interpretation, and in my job, reference to case law. So whatever my initial reaction may have, as

Special Inspector General that—of course, your initial reaction guides your subsequent conduct, but I have not thoroughly researched this issue and its appropriateness. So, therefore, I feel a little bit uncomfortable, especially in this setting to give you an uninformed opinion.

Senator BROWN. OK, fair enough, and I expected that. I just remember when I—this case, as I mentioned earlier, of National City in Cleveland and PNC in Pittsburgh, PNC not only got TARP funds, National City didn't—National City has clearly made bad management decisions, and it is a bank that was struggling and in some significant amount of trouble. But that PNC both got TARP funds, and National City didn't, and then PNC was given—basically promised a tax break from debt that National City held was an interesting interpretation and a great surprise, I would assume, to—I will not speak for others, but certainly a surprise for many of my colleagues, if not almost all of us, that the Secretary of the Treasury could make that kind of determination. So I know that is something you will look at, and that is a huge expenditure of taxpayer dollars. It also builds a more uneven playing field, if you will, in some of these purchases that Senator Tester talked about, and others. So I am sure you will look at that, but I implore you to do that.

My other question, would you within a week of taking office, and to the best of your ability, provide the information to the Committee with answers to questions surrounding the proposed acquisition of National City? I have sent a letter to Treasury. I have spoken to several at Treasury, including the Secretary. We have asked in this Committee for answers to some of these questions about, in fact, how troubled National City was and was this necessary to allow PNC with the incentives PNC was given to purchase this bank. None of those questions have been answered from Treasury, either from my direct questions on the phone or my written questions, or the questions coming out of this Committee on National City. And I would ask that you commit to us to answer that, preferably within a week, if at all possible, of your swearing-in.

Mr. BAROFSKY. Senator, if confirmed, I would certainly work with Treasury to get answers to the relevant questions.

Senator BROWN. OK. That is all I can ask. Thank you.

Thank you, Mr. Chairman.

Chairman DODD. Thank you, Senator Brown.

Senator MENENDEZ.

Senator MENENDEZ. Thank you, Mr. Chairman.

Mr. Barofsky, at the Finance hearing on Monday, in response to a question about the intent of Congress, you seemed to waiver, primarily for necessarily lack of knowledge, it sounded to me like. I think that might be a fair characterization of what it was. And I just want to read to you the first page of the legislation of the intent of Congress, which was pretty well stated clearly. It reads that, "The purposes of this Act are to restore liquidity and stability," and "to ensure that such authority and such facilities are used in a manner that, (A) protects home values, college funds, retirement accounts, and life savings; (B) preserves homeownership and promotes jobs and economic growth; (C) maximizes overall re-

turn to the taxpayers of the United States; and (D) provides public accountability for the exercise of such authority.”

Now, do you have a difference of opinion with reference to what the congressional intent was?

Mr. BAROFSKY. I am sorry, Senator. I think that the purposes of the statute are clearly set out. I certainly do not disagree that these are the purposes of the statute, if that is your question.

Senator MENENDEZ. OK. And the reason I read them is because when you were before the Finance Committee, your answer was, “I do not know the details of the policy decisions that went into the creation of the statute,” and I understand that. But the purposes are clearly stated out, and the reason that that is so important is because where you go in terms of pursuing your authority is going to be important in terms of where the purposes are, because some of us have real concerns that this program has been taken in a direction in which these purposes, as determined by the Congress as it relates to its intent, has not been pursued. Or they may be outside of the ambit of that pursuit.

So I just want to make sure that we are in sync about what is the congressional intent. You have no dispute of what is actually written in the legislation?

Mr. BAROFSKY. No, Senator, nor do I think it would be my place to have such a dispute.

Senator MENENDEZ. And so, if confirmed, would you ensure that your role and actions as Inspector General fall in line with these purposes as expressed by the Congress in the legislation?

Mr. BAROFSKY. Yes, Senator.

Senator MENENDEZ. OK. Now, in light of—and I think you were somewhat asked this before, but I just want to get it straight on. In light of the fact that Treasury has shifted its focus from purchases of troubled assets to capital injections into companies, the position to which you are nominated has maybe shifted as well. And there are some reports out there suggesting you may not have the authority that you need to pursue it.

Do you believe that under the law, as it exists now, you have the authority needed in this legislation to monitor the way the program has been directed up to this point?

Mr. BAROFSKY. I do believe that, as I mentioned earlier—I know there were some suggestion at some point that the purchases under the Capital Purchase Program might not be within the jurisdiction of the Special Inspector General. I do not read the statute that way. I think, based on the provision that Senator Bunning read earlier, that they fall within the definition of “troubled assets,” and I believe that the provision that empowers the Special Inspector General very clearly encompasses those. So I do believe we—

Senator MENENDEZ. So your pursuit of uncovering waste, fraud, and abuse concerning capital injections is clearly within your parameters?

Mr. BAROFSKY. That is certainly my understanding.

Senator MENENDEZ. Now, if perchance when you get there and if there arises a dispute of what powers you have, would you come quickly to the Congress if you felt that you needed any additional powers in order to pursue the intent of the Congress in the creation of a Special Inspector General position?

Mr. BAROFSKY. With no delay.

Senator MENENDEZ. OK. Can you give me an example of what your first steps, if confirmed, would be as Inspector General?

Mr. BAROFSKY. The first thing I would do on day one is obviously to sit down with Inspector General Thorson, who is currently on an interim basis providing that oversight. I think that meeting will be very instructive in finding out, one, what has been done up until this point; two, what the challenges are; to the extent that there have been any problems that he foresees. And I think that meeting will be one of the first things to do if confirmed.

Second, of course, I would go and talk to those running the program and begin the process of getting all of the relevant information that, again, as someone reviewing the website has not had; and then with that information, of course, building a staff. That is going to be one of the most important things I need to do from day one, is quickly and efficiently putting together a management staff so we can start building this office. And, of course, based on my meetings with the TARP personnel and Treasury personnel and with Inspector General Thorson, begin oversight, begin becoming part of the process and reviewing the process from day one.

Senator MENENDEZ. Now, there is no question about your legal ability or your investigative ability. Give me a little sense of your management ability.

Mr. BAROFSKY. Senator, I would start most recently with my management of the Mortgage Fraud Group where we created a group that did not exist and supervising a group of approximately eight AUSAs, staff, and also, although not directly supervising, but managing and coordinating the FBI agents, several FBI groups that we work with.

Similarly, before that, on the Refco prosecution, there it was—again, we had our team of AUSAs, our team of law enforcement agents, our support staff, but also coordinating and managing a lot of other entities that provided support and directing in that investigation. Of course, I am referring to the myriad of victims, witnesses, the company itself, coordinating with the bankruptcy trustee, with counsel, with forensic accountants, audit accountants, with the SEC, with the CFTC, with all of these different entities, and sort of directing and coordinating toward the common goal.

Before that, as Senator Schumer referred to, is my leadership in the investigation of the Revolutionary Armed Forces of Colombia. There again we had our own prosecutorial team. We also had two separate DEA task force groups—one stationed in New York City, one in Bogota, Colombia—all of those resources; in addition, our incredible efforts of our partners down in Colombia and working and coordinating with the Colombia national police, with the Colombian military, with Colombia military intelligence, the Colombia secret police, the prosecutor's office down there, as well as our U.S. law enforcement and U.S. Intelligence Agency, coordinating all of that information—the phrase is “herding all of those cats.” I think that that experience is going to serve me well if I am fortunate enough to be confirmed.

With all of that said, I do recognize that I have not run an office that—if it does become 100 persons. One of the things that I would focus on is bringing somebody on board who does have that experi-

ence, particularly a Government entity, and being able to complement my skills and my experience and my management experience with someone who may have a greater degree of familiarity with all the rules and regulations that are involved in building a Government Federal agency from ground zero.

Senator MENENDEZ. Mr. Chairman, if I may ask two last questions.

When you testified before the Finance Committee Monday, you said you were only able to assume that the bill gave you the authority to access and review Treasury documents and books. Assuming that that still would be the answer if I asked you—

Mr. BAROFSKY. I have reviewed the statute since then. I do believe that the Special Inspector General would have full and complete access to any document that Treasury had.

Senator MENENDEZ. Well, good, because that is my view of it, and I would hope that you would not be shy to use that authority.

Mr. BAROFSKY. I have gone back to the statute, in particular to the Inspector Generals Act of 1978, after the Committee hearing, and I believe that that power and authority is set forth pretty clearly in that statute.

Senator MENENDEZ. And my final question is in terms of monitoring these injections both that have taken place of money, of capital, as well as that may take place in the next tranche in the future, how will you ensure real-time data and make sure that we do not discover too far down the line that these funds might have been—might be misused?

Mr. BAROFSKY. The best way to make sure that the timeframe of reporting of what is going on with the money would be, again, to reach out to those who are running the TARP as well as the contractors whose responsibility it is to oversee that information, whether it is the asset managers or the custodian. And one of the many first things that I would be doing would be getting in touch with those contractors who are in place to make sure that we could get that type of real-time information.

Senator MENENDEZ. All right. Thank you, Mr. Chairman. I look forward to supporting your nomination.

Chairman DODD. Thank you very much, Senator. I appreciate it.

Let me pick up on—Senator Menendez and I always accuse each other of having mental telepathy back and forth around questions, and his question regarding the—

Senator MENENDEZ. I like to say great minds think alike, Mr. Chairman. In your case, it would be true. In my case—

[Laughter.]

Chairman DODD. I appreciate that. The Capital Purchase Program, while we are here to ask you questions, my sense—and I guess it is as maybe Chair of the Committee—I believe you have that authority. Clearly, the program has shifted, as it could have. We anticipated when we wrote the statute, despite what the Treasury wanted—the Treasury, as my colleagues Senator Bunning and Senator Menendez here will recall, that three-page bill that was sent up only allowed the Treasury Secretary to have a disposition of assets. That is all they requested. We in the Congress decided that it was far more important after the hearings to give broad latitude so that we could utilize a lot of vehicles, including the Cap-

ital Purchase Program, to go forward. And that was done intentionally so. We wanted to make sure there was the flexibility to respond to this crisis that we are in.

And so I want to use the opportunity of your confirmation hearing to say to you, Mr. Barofsky, that I believe you have that authority to get into this. I would not want you to take on this responsibility and then be informed by the Treasury that this job was only to look at the TARP, a program that is of minimal significance at this point. And so I would not want you leaving here or the Treasury officials or others to in any way constrain your ability to do your job when it comes to this program.

So while I appreciate your answer to Senator Menendez's question, I will utilize this hearing as an opportunity to tell you I believe you have that authority, and you should exercise that authority. And if someone tells you you do not have that authority, you let me know immediately in this Committee, and I think we will respond accordingly that we want you to be able to have the ability to do that.

Which raises the second question for me, because it has to do with a point, and that is, regarding this Capital Purchase Program, bank regulators are recommending to Treasury which banks, obviously, should be eligible to participate in the program. And these regulators are rightfully reluctant—and I understand it—to discuss conditions of specific banks in public. And I am sensitive to that point.

However, I believe that Congress and the public have a right to know how these institutions are being selected and whether the selection criteria are being applied evenly by the agencies. And that is something you cannot have access to, and you ought to be letting us know about that as well.

So I am asking the question: Are you authorized by statute to determine how the banking regulators are making their decisions? I will ask you to answer that question, but I have my own strong opinion. What is your opinion?

Mr. BAROFSKY. I believe that the statute—and I think that it is quite clear, that the role of the Special Inspector General is to examine the process under which banks are selected, or any participant in the Troubled Asset Relief Program is selected to be a beneficiary of any type of money, including under the Capital Purchase Program.

Chairman DODD. Well, it is a very important issue for us because, as this program has shifted, and as Senator Bunning raised the issue I think earlier, at least indirectly about this, this is a very important issue for us. We are trying to encourage the banks, obviously, to lend, to get money moving, to get the credit crisis unclogged, so to speak, and opened up. And, obviously, this is an important element. And I understand it cannot happen overnight, that immediately by putting capital in, you immediately get the flow occurring. But it is very important to understand why institutions were chosen and what is occurring in that regard. This is going to be a major point in terms of the success or failure of this effort.

So I hope you will—again, I will ask this question: Can you and will you talk to the banks to see how they are using this money?

Mr. BAROFSKY. Obviously, part of the role of the Special Inspector General is to report back on how the money is being used. I do not see how a Special Inspector General could do their job under the statute and ensuring that the—and fulfill his or her mandate without speaking to the people who received the capital.

Chairman DODD. All right. I appreciate that as well. And, again, with the statute, there is a—several of our colleagues have raised issues about getting staff up and moving, and you have made the point yourself as well. Senator McCaskill of Missouri has raised with me some concerns about whether or not we are providing enough authority for you to get the people in place and do the job. And we are looking at that. I believe we have, but we want you to get moving on this. But I also would caution, while we have provided \$50 million here, a lot of that was to deal with what would have been massive asset acquisition. In a sense, you could almost make a case that that amount of resources were probably necessary if we would be purchasing literally millions of assets, potentially. This is still a very large task we are asking you to perform, but I would urge you, as I am sure you will, to be cautious about the expenditure of those dollars. There is no requirement under law that you spend all that money. It is a ceiling not a floor. So I hope you will exercise caution in how those dollars are being spent in putting your team together.

Mr. BAROFSKY. Absolutely, Senator.

Chairman DODD. Senator Bunning, yes.

Senator BUNNING. One last question, please.

Mr. Barofsky, I am very impressed with your credentials as a prosecutor in the Southern District of New York, but I wonder what experience you have had with Federal contracting matters, administrative law, the separation of powers. The statute we enacted to create your office calls for someone who demonstrates a background in public administration. What is your background in these areas?

Mr. BAROFSKY. I believe, Senator, respectfully that the statute calls for someone with demonstrated integrity and then specialty in—

Senator BUNNING. I did not question that.

Mr. BAROFSKY. No, no. And, in addition, in a variety of different areas, including expertise in investigations, in law enforcement, and in law, in addition to those other concerns.

Senator BUNNING. But to make the office work properly, and in talking with Senator Menendez, you have stated that there were certain essentials necessary for you to get your office up and running properly. And if you cannot deal with someone in public administration particularly, the public administration would be dealing with our Committee to make sure that we understand what you are trying to accomplish by going to a bank and saying, "What in the world are you doing with this money?"

Mr. BAROFSKY. And, Senator, as I mentioned to the other Senator, that is why, if confirmed, I would seek to fulfill my staff with people that can complement my set of skills. And I think it would be absolutely essential, and I agree with you 100 percent, that part of our core management staff has to be those who have experience so we can cover every one of those qualifications, including public

administration, including legislative affairs, including an audit function. And I certainly have a good deal of experience of reviewing audits where they failed, but I would want to bring someone on who has experience in establishing audits.

Senator BUNNING. I just am so concerned about this law that we created because the—I do not know if you know the CQ magazine or not, the quarterly that comes out, or the weekly that comes out, but they are not a partisan magazine by any stretch, Republican or Democrat. They are straight down the middle. And they talk about the bait and switch that was done in this law, that the Secretary of the Treasury and the Chairman of the Federal Reserve came and baited us with certain issues that they were going to do; when they got the money, they switched to other issues that were not very mentioned—very lightly in our questioning what they were going to do with the \$700 billion.

Now, I do not want that to happen to you as an Inspector General that you will get stuck by Treasury saying, I am sorry, you do not have any jurisdiction in this place. What are you doing sticking your nose in? You do not have anything to do with Freddie and Fannie and the money that we have spent there, even though it is directly tied into this law, and just because the Treasury Department says, no, you are not involved, and even the IG for the Treasury Department says you are not directly involved, you ought to come to this Committee and make sure that you have the right and the duty to see what is happening with the \$700 billion. And if you are not going to do that, you will never get my support for this job.

Mr. BAROFSKY. Senator, if I were not going to do that, I would not be sitting here. I would not leave my job in the Southern District of New York to come here to do a job where I would not have the authority and ability to be a complete and comprehensive watchdog of this \$700 billion. And I believe that I do have the authority and ability to fulfill that job based on my—

Senator BUNNING. Well, what I am saying to you is if you do not think so—

Mr. BAROFSKY. In a second, Senator.

Senator BUNNING. —and you get stonewalled at certain areas, you make sure you come to whoever sits in that chair right up there. And I do not know if it will be the current man or not, because he is—well, that is great—or anybody else. But the fact of the matter is you ought to have the authority to get the job done, and if you do not, come to us and you will get it.

Mr. BAROFSKY. Senator, no one has ever accused me of being a shrinking violet, and I certainly would not start with this job. I can assure you of that, and I would not hesitate for a second if I believed—if I am confirmed, if I believed that I am being stonewalled or denied access to information that is necessary to perform the oversight set forth by this Congress.

Senator BUNNING. Here is the article I was speaking about on the back page of the CQ, and it outlines exactly what has happened up until now. I am afraid—I do not want to see you in the last four paragraphs in 3 weeks saying that, oh, by the way, he is the IG but he cannot do a damn thing about it.

Chairman DODD. Thank you, Senator.

And, last, just a comment. I mentioned Senator McCaskill earlier, and there is some suggestion as to whether or not under the statute we have provided emergency authority for hiring purposes or the normal processes may delay because it takes time, obviously, to go through the tradition. If this were just a normal process, it can be a longer process to put people in place. And that I think is the point that was raised.

There is nothing we can do about that now. I do not believe we are going to be here legislating over the next few weeks, but I would like to be informed as to whether or not there is any significant delay putting people in place. And if that is the case, then we will be back early in January and possibly declare some additional action by Congress to allow for emergency authority so that we can expedite the hiring. So I would like to be informed as to whether or not that is the case. Very quickly, by the way, we need to know that. That has been an early suggestion to us.

With that, we thank you again for your willingness to take on this responsibility. This Committee will try and deal with this as quickly as we can. I do not know quite how we do this, but we are going to try and see if we cannot get an action by the Committee, require maybe some consent for us to waive certain requirements in terms of time, and then see if we cannot get this matter up on the consent calendar before the Senate to be able to have your confirmation confirmed. I intend to be very supportive of your nomination, and I am confident my colleagues will as well. And so we look forward to working with you, Mr. Barofsky.

Mr. BAROFSKY. Thank you, Mr. Chairman, and thank you for your time today.

Chairman DODD. Thank you very much.

This Committee will stand adjourned.

[Whereupon, at 11:40 a.m., the hearing was adjourned.]

[Prepared statements, biographical sketch of nominee, and additional material supplied for the record follow:]

PREPARED STATEMENT OF NEIL M. BAROFSKY

TO BE SPECIAL INSPECTOR GENERAL,
TROUBLED ASSET RELIEF PROGRAM

NOVEMBER 19, 2008

Chairman Dodd, Senator Shelby, and Members of the Committee, I am honored to appear before you as the President's nominee to be the Special Inspector General for the Troubled Asset Relief Program (TARP). I am grateful to this Committee for taking the time to consider my nomination, and it is indeed humbling to be considered for such an important and vital position at this moment in our nation's history. If confirmed, I look forward to working closely with the Members of this Committee and your respective staffs, as well as the other Committees that will be overseeing the program in carrying out my responsibilities as Special Inspector General.

If I may, I will take a moment to share with you my professional background and why I think it prepares and qualifies me for this position. For the past eight years I have served as an Assistant United States Attorney in the Southern District of New York. My experience as an Assistant United States Attorney has reaffirmed to me the importance and rewards of public service, and if confirmed, I look forward to the opportunity to provide greater service to this country at a most serious time.

This past summer, our United States Attorney asked me to supervise a newly created Mortgage Fraud Group to respond to the havoc that mortgage fraud has caused to countless homeowners and lenders in our District. Drawing on an amazingly talented group of prosecutors of different levels of experience and expertise in such areas as Securities Fraud, Organized Crime, Major Bank Fraud, Asset Forfeiture and Civil Fraud, we have attacked at the root those who have contributed significantly to the current housing and financial crisis through wholesale fraud of homeowners, lenders, and investors. We have focused on crimes committed by those who have tricked lenders into making loans that were never intended to be repaid; those who have engaged in predatory lending practices by tricking homeowners into applying for mortgages that they never could afford; and the criminals who have engaged in schemes in which they literally steal the homes from citizens who found themselves in default on their mortgages. I have also supervised our office's joint investigation into the vast Credit Default Swaps market with the Office of the New York State Attorney General. I believe that my experience as the head of the Mortgage Fraud Group, and my role in both supervising and participating in these investigations has given me a vital education in understanding some of the root causes of the current financial crisis, as well as the securities and derivative instruments whose decline in value has been such an important part of it. It also has given me the tools to identify the markers of fraud throughout the financial industry, the necessary expertise in investigating such frauds, and, of course, the experience of establishing a plan of attack on those committing these frauds.

While an Assistant United States Attorney, I was also one of the lead prosecutors in the investigation and prosecution of those criminally responsible for the \$2.4 billion fraud that was committed at Refco, Inc., the commodities giant that imploded in October 2005, just months after the company went public. This investigation and trial has thus given me the experience to understand and detect complex billion dollar frauds and an understanding of financial audits and where they can fail. Over the last few weeks, as have many Americans, I have been closely following the current financial crisis and the Government's response, and in particular the creation and execution of the TARP. If confirmed, I look forward to contributing to the oversight that Congress has established to protect the tax payers' \$700 billion investment and fulfilling the duties of the Special Inspector General, as outlined in the relevant governing statutes.

My overriding goal as Special Inspector General for the TARP would be to make sure that its rules and regulations are followed and to prevent waste, fraud, and abuse. We will need to establish an efficient and effective audit program. And of course, we will need to establish an investigative arm, which I can assure this Committee will tirelessly investigate and refer for prosecution any individual or entity that tries to criminally profit from the Program. I intend to work closely with each of you, your colleagues on the other committees that are overseeing the program, your staffs, GAO, and all others who are charged with overseeing this historic program. I want to emphasize to you that I fully understand and appreciate that, if confirmed, I am accountable to you, the Congress and the American people. I fully intend, accordingly, to keep you fully and promptly apprised of significant findings and concerns.

Mr. Chairman, Senator Shelby, and Members of the Committee, I want to thank you for this opportunity to appear before you. I would be pleased to respond to any questions that you may have.

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

Name: Barofsky Neil M
(Last) (First) (Other)

Position to which nominated: Special Inspector General, Troubled Asset Relief Program

Date of nomination:

Date of birth: 16 April 1970 **Place of birth:** Abington, PA
(Day) (Month) (Year)

Marital Status: Married **Full name of spouse:** Karen Lutwin Barofsky

Name and ages of children:
None.

Education:	Institution	Dates attended	Degrees received	Dates of degrees
	New York University School of Law	8/92 - 5/95	J.D.	5/95
	University of Pennsylvania, College of Arts and Sciences	9/88-5/92	B.A. in International Relations	5/92
	University of Pennsylvania, Wharton School of Business	9/88-5/92	B.S. in Economics	5/92

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships and any other special recognitions for outstanding service or achievement.

Executive Office of the United States Attorneys' Director's Award for Superior Performance by a Litigative Team (12/06).

Attorney General's John Marshall Award for Outstanding Legal Achievement for Asset Forfeiture (10/07).

International Law Fellowship, New York University School of Law (9/93 - 5/94).

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations.

Organization	Office held (if any)	Dates
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None.		
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Employment record: List below all positions held since college, including the title or description of job, name of employment, location of work, and inclusive dates of employment.

Assistant United States Attorney, United States Attorney's Office, Southern District of New York, New York, NY. October 2000 - present.

Associate, Morvillo, Abramowitz, Grand, Iason & Silberberg, New York, NY. February 1997 - October 2000.

Associate/Summer Associate, Weil Gotshal & Manges, New York, NY. October 1995 - February 1997; Summer 1994.

Research Assistant, New York University School of Law, New York, NY. Summer 1993.

Government

experience: List any experience in or direct association with Federal, State, or local governments, including any advisory, consultative, honorary or other part time service or positions.

Since October 2000 I have been an Assistant United States Attorney in the Southern District of New York.

Published

Writings: List the titles, publishers and dates of books, articles, reports or other published materials you have written.

None.

Political

Affiliations

and activities: List memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

I have been a registered Democrat since 1988.

Political

Contributions: Itemize all political contributions of \$500 or more to any individual, campaign organization, political party, political action committee or similar entity during the last eight years and identify specific amounts, dates, and names of recipients.

I have made no political contributions of \$500 or more.

Qualifications: State fully your qualifications to serve in the position to which you have been named.
(attach sheet)

Please see my attached resume.

Future employment

relationships: 1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

I will.

2. As far as can be foreseen, state whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

I have no such plans.

3. Has anybody made you a commitment to a job after you leave government?

No.

4. Do you expect to serve the full term for which you have been appointed?

Yes.

**Potential conflicts
of interest:**

1. Describe any financial arrangements or deferred compensation agreements or other continuing dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None.

2. List any investments, obligations, liabilities, or other relationships which might involve potential conflicts of interest with the position to which you have been nominated.

None.

3. Describe any business relationship, dealing or financial transaction (other than tax paying) which you have had during the last 10 years with the Federal Government, whether for yourself, on behalf of a client, or acting as an agent, that might in any way constitute or result in a possible conflict of interest with the position to which you have been nominated.

None.

4. List any lobbying activity during the past ten years in which you have engaged in for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation at the national level of government or affecting the administration and execution of national law or public policy.

None.

5. Explain how you will resolve any conflict of interest that may be disclosed by your responses to the items above.

I have no conflicts.

**Civil, criminal and
investigatory
actions:**

1. Give the full details of any civil or criminal proceeding in which you were a defendant or any inquiry or investigation by a Federal, State, or local agency in which you were the subject of the inquiry or investigation.

I was the defendant in an uncontested divorce action in 2006, Youssef v. Barofsky, in New York Supreme Court, Kings County. The divorce became final on June 6, 2006.

2. Give the full details of any proceeding, inquiry or investigation by any professional association including any bar association in which you were the subject of the proceeding, inquiry or investigation.

None.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

EESA LEGISLATION SECTION CREATING THE SPECIAL INSPECTOR GENERAL**SEC. 121. SPECIAL INSPECTOR GENERAL FOR THE TROUBLED ASSET RELIEF PROGRAM.**

(a) Office of Inspector General—There is hereby established the Office of the Special Inspector General for the Troubled Asset Relief Program.

(b) Appointment of Inspector General; Removal—(1) The head of the Office of the Special Inspector General for the Troubled Asset Relief Program is the Special Inspector General for the Troubled Asset Relief Program (in this section referred to as the ‘Special Inspector General’), who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The appointment of the Special Inspector General shall be made on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations.

(3) The nomination of an individual as Special Inspector General shall be made as soon as practicable after the establishment of any program under sections 101 and 102.

(4) The Special Inspector General shall be removable from office in accordance with the provisions of section 3(b) of the Inspector General Act of 1978 (5 U.S.C. App.).

(5) For purposes of section 7324 of title 5, United States Code, the Special Inspector General shall not be considered an employee who determines policies to be pursued by the United States in the nationwide administration of Federal law.

(6) The annual rate of basic pay of the Special Inspector General shall be the annual rate of basic pay for an Inspector General under section 3(e) of the Inspector General Act of 1978 (5 U.S.C. App.).

(c) Duties—(1) It shall be the duty of the Special Inspector General to conduct, supervise, and coordinate audits and investigations of the purchase, management, and sale of assets by the Secretary of the Treasury under any program established by the Secretary under section 101, and the management by the Secretary of any program established under section 102, including by collecting and summarizing the following information:

(A) A description of the categories of troubled assets purchased or otherwise procured by the Secretary.

(B) A listing of the troubled assets purchased in each such category described under subparagraph (A).

(C) An explanation of the reasons the Secretary deemed it necessary to purchase each such troubled asset.

(D) A listing of each financial institution that such troubled assets were purchased from.

(E) A listing of and detailed biographical information on each person or entity hired to manage such troubled assets.

(F) A current estimate of the total amount of troubled assets purchased pursuant to any program established under section 101, the amount of troubled assets on the books of the Treasury, the amount of troubled assets sold, and the profit and loss incurred on each sale or disposition of each such troubled asset.

(G) A listing of the insurance contracts issued under section 102.

(2) The Special Inspector General shall establish, maintain, and oversee such systems, procedures, and controls as the Special Inspector General considers appropriate to discharge the duty under paragraph (1).

(3) In addition to the duties specified in paragraphs (1) and (2), the Inspector General shall also have the duties and responsibilities of inspectors general under the Inspector General Act of 1978.

(d) Powers and Authorities—(1) In carrying out the duties specified in subsection (c), the Special Inspector General shall have the authorities provided in section 6 of the Inspector General Act of 1978.

(2) The Special Inspector General shall carry out the duties specified in subsection (c)(1) in accordance with section 4(b)(1) of the Inspector General Act of 1978.

(e) Personnel, Facilities, and Other Resources—(1) The Special Inspector General may select, appoint, and employ such officers and employees as may be necessary for carrying out the duties of the Special Inspector General, subject to the provisions of title 5, United States Code, governing appointments in the competitive service,

and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(2) The Special Inspector General may obtain services as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS-15 of the General Schedule by section 5332 of such title.

(3) The Special Inspector General may enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and make such payments as may be necessary to carry out the duties of the Inspector General.

(4)(A) Upon request of the Special Inspector General for information or assistance from any department, agency, or other entity of the Federal Government, the head of such entity shall, insofar as is practicable and not in contravention of any existing law, furnish such information or assistance to the Special Inspector General, or an authorized designee.

(B) Whenever information or assistance requested by the Special Inspector General is, in the judgment of the Special Inspector General, unreasonably refused or not provided, the Special Inspector General shall report the circumstances to the appropriate committees of Congress without delay.

(f) Reports—(1) Not later than 60 days after the confirmation of the Special Inspector General, and every calendar quarter thereafter, the Special Inspector General shall submit to the appropriate committees of Congress a report summarizing the activities of the Special Inspector General during the 120-day period ending on the date of such report. Each report shall include, for the period covered by such report, a detailed statement of all purchases, obligations, expenditures, and revenues associated with any program established by the Secretary of the Treasury under sections 101 and 102, as well as the information collected under subsection (c)(1).

(2) Nothing in this subsection shall be construed to authorize the public disclosure of information that is—

(A) specifically prohibited from disclosure by any other provision of law;

(B) specifically required by Executive order to be protected from disclosure in the interest of national defense or national security or in the conduct of foreign affairs; or

(C) a part of an ongoing criminal investigation.

(3) Any reports required under this section shall also be submitted to the Congressional Oversight Panel established under section 125.

(g) Funding—(1) Of the amounts made available to the Secretary of the Treasury under section 118, \$50,000,000 shall be available to the Special Inspector General to carry out this section.

(2) The amount available under paragraph (1) shall remain available until expended.

(h) Termination—The Office of the Special Inspector General shall terminate on the later of—

(1) the date that the last troubled asset acquired by the Secretary under section 101 has been sold or transferred out of the ownership or control of the Federal Government; or

(2) the date of expiration of the last insurance contract issued under section 102.